No 661 23/10/99

ENCUMBERED ESTATES.

I.—Gujarát Encumbered Estates.

1. In the case where the lands handed over to the manager appointed under Act XV of 1871* are in the possession of tenants of the mortgagees, the standing crops clearly belong to the tenants of the mortgagees, and the manager should only collect from them the rent in grain or in money which they had agreed to pay to the said mortgagees.

In the case where the lands were cultivated by the mortgagees personally, the standing crops should be enjoyed by the mortgagees personally in lieu of the landlord's rent; the Talukdári Settlement Officer should levy from them an assessment equivalent to the ordinary assessment collected by Government from similar lands in the neighbourhood.

In the first of the cases above mentioned, if the rents agreed to be paid by the cultivators to the mortgagees shall be found to be excessive, the manager need only levy from the cultivators rents equivalent to the ordinary assessment on similar lands held under Government in the neighbourhood.

The rents thus collected from the mortgagees or the sub-tenants of the mortgagees should be taken into account in the ultimate settlement of debts between the Talukdárs and the mortgagees. (G. R. No. 1351, dated 22nd March 1872.)

* Repealed by Act XIV of 1877, which with the exception of the last three sections has been repealed by Act XXI of 1881.

2. The manager may compel the production of any documents, no matter in whose possession, under Section 14† of the Broach Thákors' Relief Act, No. XV of 1871. (L. R. No. 80, dated 6th July 1874; *vide* G. R. No. 3608, dated 14th idem.)

† Cf. Section 35 of Act XXI of 1881.

3. If a Thákor whose estate is managed under Act ‡ XV of 1871 succeeds to an estate encumbered with debts, those debts cannot be settled according to the rules applying to liabilities for the liquidation of which the Thákor's original estate was brought under the Act. Section 9§ of Act XIV of 1877 describes the consequences which are to ensue upon the publication of the order of management, but each of the consequences refers only to "the debts and liabilities mentioned in Section 8," which are "all debts and liabilities to which the Thákor is subject, or which are charged on the whole or any part of his immoveable property" *on the date of the publication of the order of management*. And although Section 8 ‖ expressly provides that the order of management shall extend to all immoveable property "which may be acquired by or devolve on the debtor during the continuance of the management," there is nothing in Part IV of the Act (which deals with "the proof of debts and the scheme for liquidation") to empower the manager to prepare a scheme for the liquidation of subsequently acquired debts and liabilities. (L. R. No. 1102, dated 25th September 1877; *vide* G. R. No. 6000, dated 5th October 1877.)

‡ Now Act XXI of 1881.

§ Cf. Section 9 of Act XXI of 1881.

‖ Cf. Section 8 of Act XXI of 1882.

4. A holder of wazifa land is not a Thákor within the meaning of Act XIV* of 1877. The tenures under which wazifa and jághír lands are held differ so materially that a jághirdár cannot include a wazifdár. A Thákor, the bulk of whose property is in a district other than those of Broach and Kaira, cannot be considered to be within the scope of the Act, because he may happen to have 15 or 20 acres of land within those districts. (Adv. Gen. No. 8 of 1878; *vide* G. R. No. 330, dated 21st January 1878.)

* Now Act XXI of 1881.

5. It appears that in the case of a joint application under the Broach and Kaira Encumbered Estates' Act, it is competent to the officer who makes the enquiry under Sections 5 and 6 to require the applicants to give precise information as to whether they are or are not divided in estate, and as to whether their debts are joint or separate debts, and it is competent to the Commissioner under Section 7 to direct further enquiry on this point.

But where both the debts and the estate are joint, the application ought to be made in the joint names of all the co-parceners, and the order of management ought to include all such co-parceners' names.

The individual liabilities of several separated brethren cannot legally be clubbed together. If the applicants are really divided in estate, the case of each one of them ought to be dealt with separately on its own merits. Undivided brethren do, it is true, occasionally own separate property of their own (see the note at page xli of the introduction to West and Bühler's Digest of Hindu Law, Book I and the authorities there referred to), but even then their debts are usually the joint debts of the family and not their own merely. And even if the debtor who makes an application under the Act is an undivided brother having separate property and separate liabilities, the order of management can only properly extend to his separate property and to his individual share in the undivided property. The Act would not justify the manager in interfering with the other parceners' shares in the undivided estate unless they also happened to have taken the benefit of the Act on separate applications, and each share would have to be separately released from management as soon as the liabilities charged upon it were liquidated. (L. R. No. 123, dated 12th February 1878; *vide* G. R. No. 903, dated 19th idem.)

6. The Commissioner should not grant applications under the Broach and Kaira Encumbered Estates Act except under peculiar circumstances, unless there is reason to suppose or know that the debts exceed the total amount of five years' net profits of the applicants' respective estates. The determination of what constitutes 'peculiar circumstances' is left entirely to him. (G. R. No. 4425, dated 29th August 1878.)

7. When a separate estate burdened with debts devolves on a debtor whose estate is already under

management, the proper course is to notify the fact and to issue a separate notice to the creditors under Section 12 of Act XXI of 1881 as if the estate had been formally brought under management. (L. R. No. 1524, dated 27th November 1882; *vide* G. R. No. 8623, dated 9th December 1882.)

8. In exercise of the power conferred by Section 3 of the Broach and Kaira Encumbered Estates Act, 1881, the Governor in Council is pleased, with the previous sanction of the Governor General in Council, to declare that the Máliks of Thásra in the District of Kaira are Thákors for the purposes of the said Act. (G. N. No. 5295, dated 16th July 1883.)

9. Under Section 9 of Act XXI of 1881, as soon as an order of management is published in the *Bombay Government Gazette*, all proceedings in respect to the debts and liabilities to which the debtor therein named is subject, shall be stayed, and the operation of all processes, executions and attachments then in force in respect of such debts and liabilities shall be suspended, and no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any Civil Courts in British India in respect thereof. Under No. 12* of the rules made under Section 31 of Act XIV of 1877 and saved by Section 2 of Act XXI of 1881, a copy of the Commissioner's notification shall be affixed in the Court of the Subordinate Judge within whose jurisdiction the debtor resides or the bulk of his estate is situated, and one copy in the Court of the District Judge to whom such Judge is subordinate.

**Vide* page 537 of the Compilation of General Rules in force in the Revenue Department, third edition.

This is intended to give the Courts intimation of the fact that a debtor's estate is under management.

But it does not appear that a Court could act on such an intimation alone.

The mere production of the published order would, under Section 78 of the Evidence Act, 1872, be sufficient proof of the notification.

But the Court must of course be satisfied that the debtor in respect of whom execution is sought, is the person referred to in the order of management, and cannot of its own motion raise an objection without evidence adduced or allegation made.

The Collector's certificate would have to be produced by somebody.

The Courts cannot carry on their judicial proceedings by official correspondence, and the certificate would be no proof that the debtor was the person referred to in an order.

The production of the order would do all that the production of the certificate could do, and if the identity of the debtor with the person mentioned in the order were challenged, the Court could not dispense with evidence on that point on the mere strength of the certificate.

If any proceedings in execution are instituted or continued after an order of management barring,

staying or suspending them, they are absolutely void, and no sale under them will pass any property to the purchaser, and any attempt by the purchaser to obtain possession could be at once defeated on the production of the order of management by or on behalf of the manager.

No trouble would be saved by substituting a certificate as evidence for the order of management which is already evidence the genuineness of which the Courts shall presume (Section 81 of Act I of 1872).

It is not necessary to satisfy the Court that the property attached is under management, but only that the debtor is a person in respect of whose debts and liabilities an order of management has issued.

No formal application for the removal of attachment is necessary. Objection might be taken to the whole of the proceedings in execution at any stage as barred, stayed or suspended under Section 9 of the Broach and Kaira Encumbered Estates Act, 1881. (L. R. No. 286, dated 25th February 1891; *vide* G. R. No. 1916, dated 14th March 1891.)

10. Sub-section 4 of Section 11 of the Broach and Kaira Encumbered Estates Act XXI of 1881, contemplates that the periodical allowance for the maintenance and other necessary expenses of a debtor may be fixed from time to time by the Commissioner. But from its position in the Act it seems probable that Section 11 was intended, though it is not expressly so stated, to apply only to the disposal of sums realized before the sanction of the liquidation scheme. There is no power expressly given by the Act to modify the liquidation scheme after sanction. (L. R. No. 464, dated 26th April 1893; *vide* G. R. No. 4200, dated 9th June 1893.)

11. It is not possible to amend the scheme which has been sanctioned by the Commissioner for the liquidation of the debts of a deceased Thákor by inserting therein the debts incurred by his successor before he succeeded to the estate, and providing for their payment. The only course which can be adopted is for the Thákor, when the management under the existing scheme terminates according to Section 26 of Act XXI of 1881, to make another application for the benefit of the Act. (Adv. Gen. No. 54, dated 16th May 1893; *vide* G. R. No. 4200, dated 9th June 1893.)

II.—SIND ENCUMBERED ESTATES.

1. By the Sind Encumbered Estates Act, the Commissioner in Sind is authorized to exercise general control over the Manager of the Estates in financial as well as other matters. (G. R. No. 6971, dated 21st November 1877.)

2. If the members of a family have divided their estate and have been separately assessed by Government in respect of the lands in their respective holdings, each such member must be dealt with under Act XIV* of 1876 separately, and will be entitled to relief only if the assessment on his own

* New Act XX of 1896.

lands has amounted to not less than Rs. 300. Each of such separated members will have incurred distinct liabilities for which he alone is responsible, and there is nothing in the Act which authorizes the clubbing of several of such individual liabilities together. (L. R. No. 334, dated 9th April 1877; *vide* G. R. No. 2552, dated 20th idem.)

3. The amount of *assessment* recorded against a landholder in the Government accounts is what has to be looked to in determining whether he is a zamindár within the meaning of the Sind Encumbered Estates Act or not. Casual remissions do not affect the amount of assessment, and should not be taken into account. (L. R. No. 334, dated 9th April 1877; *vide* G. R. No. 2552, dated 20th idem.)

4. It is only "if the property be in possession of any person claiming to hold under a lease dated within three years immediately preceding the commencement of the management" that the sufficiency of the consideration for which the lease was given may, under Section 21 * of Act XIV of 1876, be enquired into. It is, therefore, immaterial when the lessee's possession commenced, but it is indispensably necessary that the lease, under which he *bonâ fide* claims to hold, should be dated within three years before the commencement of the management. (L. R. No. 675, dated 23rd July 1877; *vide* G. R. No. 1630, dated 30th idem.)

* Cf. Section 22 of Act XX of 1896.

5. The Commissioner's sanction of a liquidation scheme should be notified at the Court of the Subordinate Judge within whose jurisdiction the debtor resides, or the bulk of his estate is situated, and at the Court of the District Judge to whom such Judge is subordinate. The sanction should also be notified in the *Sind Official Gazette*, both in English and in Sindhi. (G. R. No. 3306, dated 1st July 1878.)

6. Section 18† of Act XIV of 1876 enables the Commissioner, at any time before he has sanctioned a liquidation scheme, to retrace the steps taken in placing an estate under the Act and to restore the *status quo ante*. This then is the obvious course for the Commissioner to pursue whenever he has reason to think that the debts are of too insignificant an amount to justify his further intervention under the Act.

† Cf. Section 19 of Act XX of 1896.

But one of the results of the Commissioner's restoring the *status quo ante* is (*vide* Section 18, Clause *d*‡) that the debts and liabilities barred by Section 13§ (*i.e.*, those which have not been notified to the manager within the time and in the manner required by his notice issued under Section 11‖), revive. If then creditors hold back in the hope of inducing the Commissioner to put an end to the management under Section 18¶, and that their claims may be thus revived, it is not desirable that they should be allowed so to frustrate the purpose of the Act. Although, therefore, the liquidation scheme in any such case may be so only in name, the Commissioner would be perfectly justified in

‡ Cf. Section 19, Clause *d*, of Act XX of 1896.
§ Cf. Section 14, *ibid.*
‖ Cf. Section 12, *ibid.*
¶ Cf. Section 19, *ibid.*

sanctioning it if he is satisfied that the case was a proper one for the application of the Act originally. He should sanction the scheme, and allow the management to continue long enough (1) to pay off the debts and liabilities, if any, which do appear in the scheme, and (2) to bar all the claims which have not been duly notified. Mention might be made in the scheme of the fact that several of the claims, believed from the result of the preliminary enquiry to have existed, have not been notified, and that these will, therefore, be deemed under Section 13 "to have been duly discharged" without any payment being necessary from the income of the estate, and this in itself would be a good reason for the Commissioner's sanctioning the scheme. The result will be that the termination of management will be notified by the manager under Section 25*, at a much earlier date than it otherwise could have been, and the debtor will be discharged from all liability to the creditors who did not, as well as those who did, notify their claims against him to the manager. (L. R. No. 875, dated 26th July 1879; *vide* G. R. No. 4134, dated 7th August 1879.)

* Cf. Section 27 of Act XX of 1896.

7. Section 7 † of the Sind Encumbered Estates Act, 1876, enacted that the order of management shall extend to "all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right." All immoveable property of which the debtor is found in possession should, therefore, be taken into management by the manager, and he should not relinquish any portion of the property except upon due authority. His own opinion that a third party's claim to a portion of the property is well-founded would not be due authority, for the Act does not authorize the manager to determine questions of proprietary title between the debtor and other claimants. But the decree of a competent Court or the award of a duly appointed arbitrator would be due authority, and so also would the admission of the debtor himself; and if by any of these means the manager is satisfied that he has taken into his management property to which the debtor is not entitled, he would be justified in relinquishing possession of it to the rightful person, but not otherwise. (L. R. No. 384, dated 7th April 1880; *vide* G. R. No. 1962, dated 15th idem.)

† Cf. Section 8 of Act XX of 1896.

8. When an estate is held jointly by a person who is a zamindár under the Sind Encumbered Estates Act (XX of 1881) and by one who is not a zamindár under the definition in the Act, the estate cannot legally be placed under management. Section 8 ‡ of the Act enacts that the order of management "shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, &c. Now when property is held by two persons jointly, neither of them can be said to be possessed or entitled to any portion of that property in his own right, for they are each of them interested

‡ Cf. Section 8 of Act XX of 1896.

in every portion of it and, moreover, the provisions of Chapters III, IV and V of the Act are absolutely inconsistent with any person other than the zamindár being interested in the property put under management. The zamindár is entitled to have the estate partitioned, and after partition he would be entitled to the benefit of the Act in respect of the portion allotted to him. (Adv. Gen. No. 63, dated 31st August 1883; *vide* G. R. No. 6869, dated 15th September 1883.)

9. Jághírs held as life-holdings which after having come under management have lapsed to Government, owing to the deaths of the jághírdárs after they have been leased under Section 22* of the Act by the manager, are not jághírs to which provisions of Act XX of 1881 can be held to apply. A jághírdár under this Act means a person in possession of jághír land continued under the conditions described in Section 3†, and jághír land includes not only the land, but a share held *hereditarily* of the revenues of a Government village. A life-interest in a share of the revenues of a village is not a jághír within the meaning of the Act.

* Cf. Section 22 of Act XX of 1896.

† Cf. Section 2, *ibid.*

The provisions of the Act apply to jághír, whether they are grants of land or of a share of the revenues continued as hereditary property, and the manager has power to demise either the land itself or the share of the revenues, as the case may be, for a term of two years, if his liquidation scheme has not yet been sanctioned, or a term of twenty years, if it has been sanctioned. Should the jághír revert to Government as *ultimus hæres* through failure of heirs and intestacy of the jághírdár, if the management has not been terminated, Section 27 of the Act provides that the management shall continue and proceed in all respects as if the jághírdár were still living. Under all circumstances all leases lawfully granted by the manager must continue in force for the full period for which they have been granted.

With regard, therefore, to the jághírs held as life-holdings which have been illegally brought under management, the occupants who hold the lands under the jághírdár are entitled on his death to be entered as registered occupants, and all leases of the property constituting the jághír are liable to be set aside as invalid, the manager having no authority to grant them.

With regard to the jághírs which have been legally brought under management, leases of the property constituting the jághir are valid for the time they are fixed to run, that is to say, if the manager grants a lease of the jághír land, the expression "Jaghír land" in the lease must be understood to mean either the actual land or the jághírdár's share of the revenue, according to the nature of the grants. Where the lessees actually hold the land, whereas the lease only entitles them to hold a share of the revenues, they must be restricted to the terms of the

lease. The cultivators with zamindári rights will not be the lessee's tenants but inferior holders paying the land revenue to the lessee as superior holder for the period of his lease.

Government is not bound to recognize any leases which the manager may have made of jághír property held as life-time holdings, and on such property reverting to Government by reason of the death of the holder the survey settlement may be introduced and the rates thereof enforced regardless of any more favourable rates under which any lessees hold the land.

The Collector has power, under Section 111 of the Land Revenue Code, to let out the lands belonging to any jághír estate under management at survey rates or such other rates as he may deem to be reasonable, and the terms of any lease which the jághírdár (or his agent, the manager) may have made relating to the land, shall not operate to the detriment of the lawful claims of Government on the land. (L. R. No. 415, dated 10th April 1892; *vide* G. R. No. 2759, dated 27th idem.)

* Cf. Section 10 of Act XX of 1896.

10. Under Section 10* of Act XX of 1881 the manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised. The manager, therefore, can legally sell the property. This power, however, is limited by the proviso of the same section to the effect that he may not, before the liquidation scheme has been sanctioned, demise the property for any term exceeding two years.

† Cf. Section 24, *ibid.*

Again, under Section 24† of the same Act, at any time after the liquidation scheme has been sanctioned, the manager, with the previous assent of the Commissioner, shall have power to raise any money required for carrying out the liquidation scheme, by

(*a*) mortgaging the whole or any part of the property,

(*b*) selling such portion of it as may appear expedient,

(*c*) borrowing money from §Government.

‡ Cf. Section 27, *ibid.*

Section 26‡ of the same Act provides for the restoration of the property or such part thereof as has not been sold by the manager under the powers conferred by Section 24.

While, therefore, all the legal powers of the owner are vested in the manager, the exercise of these powers is made entirely subject to the control of the Commissioner and is limited to such portion of the estate as it may be considered expedient to sell in order to give effect to the liquidation scheme.

A liquidation scheme which contained a proposal to sell the whole estate under management in order to pay off the total amount of debts shown in the schedule, including advances and cost of management, would, therefore, be entirely opposed to the

§ In this connection please see para. 15 of this section.

spirit and object of the Act, and should not be sanctioned.

The liquidation scheme should show how the estate under management can be disencumbered with a view to its ultimate restoration to the owner, and not how it should be severed from the owner. If it is proposed to sell any portion of the estate to raise funds, the liquidation scheme should, if possible, show what definite portion of the estate should be sold; and as the proper working of the provisions of the Act must depend altogether on the kind of discretion exercised by the Commissioner in sanctioning the sale of any portion of an estate under management, it is clear that any proposal to sell the whole or the greater portion of an estate should be discountenanced as illegal and impolitic.

It seems only too obvious that if the sale outright of an estate would suffice to pay off the total amount of the owner's debts, *a fortiori* prudent management for a number of years would lead to the same result and preserve the estate intact.

It seems also clear that a sale of the entire estate to pay off only a small proportion of the debts marshalled under Section 11* of the Act would be a direct breach of the contract which the liquidation scheme represents, under the terms of which the creditors are entitled to receive the amount awarded them in respect of the debts or liabilities due or owing to them which the liquidation scheme has operated to extinguish. (L. R. No. 618, dated 31st May 1882; *vide* G. R. No. 3906, dated 17th June 1882.)

* Cf. Section 11 of Act XX of 1896.

11. The views expressed in the following opinion of the Advocate General No. 111, dated 11th December 1882, should be acted on :—

"In answer to query 1† it seems to me that, having regard to Section 2 of Act XIV of 1876 and Section 3‡ of Act XX of 1881, the time to which it is necessary to look, in order to determine whether the character of the jághír in question was hereditary or not, is the 17th of February 1843. I think that if the share of revenue was then held hereditarily and if the person whose status as a jághírdár has to be decided was found at the date of the application contemplated by Section 3 of the Act of 1876 or 4§ of the Act of 1881 to have that share of revenue or a portion thereof continued to him, and to have a sanad granted to him or his ancestor in conformity with terms of Sections ‖2 and 3 of these Acts, respectively, he was a jághírdár in whose behalf an order might be made under Section 6 of Act XIV of 1876 or Section 7¶ of Act XX of 1881. I have not come to this conclusion without hesitation; as the language of the Acts admits of more than one interpretation, and as I doubt whether the interpretation above given is that which was intended by the framers of the Act: but it seems to me to be the one most in conformity with the words used, and I can see no reason why 'portion' should not be a portion in duration as well as a portion in extent. When the jághír consists of land there can be no difficulty * * * .

† 1. Whether a grant in jaghir of the Government share of the revenues and soil for a life-time, or to be regranted for one generation to the lineal male heir of the incumbent at the date of the battle of Meance, subject on such regrant to a deduction of one-fourth, is an estate which can be managed under the Sind Encumbered Estates Act XX of 1881?

‡ Cf. Section 2, *ibid.*

§ Cf. Section 3, *ibid.*

‖ Cf. Section 2, *ibid.*

¶ Cf. Section 7, *ibid.*

"In answer to query 2 * I think that, having regard to Sections † 26 and 27 of Act XX of 1881, the share of revenue still remains under management for the purposes of the Act notwithstanding that the interest of the jághírdár may have lapsed pending the management. I also think that, notwithstanding such lapse, leases made by the manager in conformity with Section 22 of Act XIV of 1876 or Section 23‡ of Act XX of 1881 and the rules, if any, made in that behalf by the Commissioner under Sections § 30 and 31 of the Acts, respectively, hold good until the expiration of the terms for which they may have been granted, which terms cannot exceed 20 years in duration."

† Cf. Sections 27 and 28 of Act XX of 1896.

* 2. Whether, in the event of the grant lapsing before the termination of the management, the Government share still remains under management for the purposes of the Act until the termination of the management; and whether all leases or mortgages granted or made by the manager, under the authority of the Act, hold good for the period for which they are granted or made, not exceeding 20 years?

‡ Cf. Section 23, *ibid.*

§ Cf. Section 33, *ibid.*

(G. R. No. 16 dated 3rd January 1883.)

12. Expended advances made before a liquidation scheme is sanctioned, are part of the 'costs of the management' and by clause (1), Section 11 of Act XX‖ of 1881, they are made a first charge upon the sum received or recovered by the manager under Section 10, whether before or after a liquidation scheme is sanctioned. They may, therefore, be recovered, before an order is made under Section 19 of the Act for relinquishing the estate, by the exercise of any of the powers with which the manager is invested by Section 10 previous to the sanction of a liquidation scheme. One of these powers is the grant of a lease for any term not exceeding two years of the whole or any part of the property under management. (L. R. No. 650, dated 6th May 1883; *vide* G. R. No. 4166, dated 23rd idem.)

‖ Now Act XX of 1896.

13. According to Section 26¶ of Act XX of 1881 the Manager, Sind Encumbered Estates, cannot terminate his management of any part of the estate until the whole of the debts and the amount of any loan received are paid off. But when there is no other creditor but Government, there is nothing to prevent Government from consenting, on such terms as they think fit, to allow certain portions of the estate to be freed from management. (L. R. No. 619, dated 6th May 1884; *vide* G. Rs. Nos. 4176, dated 23rd idem, and 5270, dated 2nd July 1884.)

¶ Cf. Section 27 of Act XX of 1896.

14. According to Section 20 of the Sind Encumbered Estates Act, the sanction, by the Commissioner, of the liquidation scheme bars for ever all proceedings by a creditor in a Civil Court for the recovery of any debt due by the debtor to him, and the creditor is entitled to receive under the liquidation scheme only the amount finally awarded to him under Chapter IV of the Act in respect of such debt. In the case, therefore, of a creditor who holds moveable property in pledge for the repayment of the debt due to him, his legal lien upon that property determines the moment tender is made to him under the liquidation scheme of the amount finally awarded to him under Chapter IV. If, however, he refuse to restore the property to the debtor, it does not appear that the manager has any summary power

to compel him to do so. (L. R. No. 1696, dated 22nd December 1884; *vide* G. R. No. 111, dated 7th January 1885.)

15. The system of making State loans to embarrassed estates under the management of Government is accepted in no other part of India. Bankers, both European and native, are elsewhere found ready to come forward and lend money at rates of interest ranging from 6 to 8 per cent. on the security of Government management. It is on all grounds expedient that the same system should be introduced into Sind and that a serious effort should be made to secure the necessary loans in the local market. It is obvious that at the best of times the money which Government can afford to spare for such an object must be very limited in amount and must, moreover, be taken from other and very pressing claims. When the local money market is once attracted to these schemes, the operations in aid of encumbered proprietors can obviously be carried out on a very much larger scale. The native bankers of Sind are already disposed to invest their capital in land, and it cannot be doubted that, if the matter is properly presented to them, money will be advanced in Sind, as elsewhere, on the security of Government management.

The real obstacle at present appears to lie in the low rate of interest charged on State loans. Nowhere else will the native capitalists, who give Government the principal help in the consolidation of debts in the estates of Wards of Court, lend money at so low a rate of interest as 5 per cent., and they will not in Sind seriously compete for investments under the Encumbered Estates Act, so long as they believe the Government is ready to pay off all debts at that rate. It is a matter of importance, if action under the Encumbered Estates Act is to be encouraged and developed, that this impression should be removed.

If the Collectors altogether fail in their endeavour to attract local aid, the Government of India will not refuse help in the matter; but they will be able to give it on a limited scale only, and for the reasons stated above they are of opinion that all such advances should bear interest at 8 per cent.

In accordance with the policy set forth above, the Government of India have retained Section 24 (*c*) in the revised Sind Encumbered Estates Act. But they are averse from giving formal legislative recognition to a practice which upon general grounds they consider to be objectionable in principle. They have, therefore, omitted the words "from Government" from Section 24 (*c*) and from all other sections in which they occur in the same connection. This will leave the question whether the necessary money should be procured from public or from private sources to be determined in each individual case; and no money can be lent by Government for the assistance of an encumbered estate under the Act without the previous sanction

of the Governor General in Council. If in any case it should be found necessary to apply for that sanction, it should be fully explained why it is proposed to set aside the principles which have been explained above. (G. I., R. & A., No. 3499 (*a*)—177-6, dated 12th September 1896, and 4138—177-9, dated 4th November 1896 ; *vide* G. Rs. Nos. 8037, dated 13th October 1896, and 9585, dated 30th November 1896.)

16. The Manager, Sind Encumbered Estates, is authorized to deposit the funds of the Encumbered Estates in the Sind treasuries to the credit of 'Personal Deposits' and to withdraw the same as required by him on his cheques, which may be debited to the corresponding head of accounts on the disbursing side of the treasury accounts. The manager will keep his own detailed accounts and the treasury officer's duties will be confined to a simple entry of receipts and payments. (G. R. No. 2791, dated 8th April 1897.)

17. The charges incidental to the Sind Encumbered Estates Act, 1896, should be debited to 3, Land Revenue.

The manager and his establishment should be treated as in foreign service of the third kind and the recoveries should be taken as a set-off against the expenditure. (G. I., R. & A., No. 1014—8-5, dated 6th May 1897 ; *vide* G. R. No. 3896, dated 25th idem.)

The cost of the appointment of manager, including contribution for leave allowances and pension, should be recovered from each estate proportionately to its income at the end of the year. A maximum limit of Rs. 1,100 a month should be fixed for the emoluments (salary and special allowance) to be drawn by the manager, so that the officer holding the appointment may not continue to hold it when he is too senior. (G. I., R. & A., No. 1436-58-7, dated 28th June 1897 ; *vide* G. Rs. Nos. 5178, dated 22nd July 1897, and 6857, dated 16th September 1897.)

18. The establishment of the office of the Manager, Sind Encumbered Estates, is placed on the same footing for the purposes of travelling allowance as the establishments mentioned in clause (*c*) of Article 1262 of the Civil Service Regulations. (G. R. No. 4538, dated 16th June 1897.)

19. There does not appear to be any means of compelling an applicant under Section 3 of the Act to fill in the statement mentioned in Section 6 (1) if he refuses to do so and wishes to withdraw his application.

The Act is intended to give relief to jághírdárs and zamindárs who are involved in debts. Looking to the whole spirit of the Act, it cannot be stated that on grounds of public policy an applicant who has applied for relief under the Act should be precluded from coming to an apparently amicable arrangement or settlement with his creditors.

Amicable settlements between insolvent debtors and their creditors are, as a rule, encouraged. In the Insolvency Court for the relief of debtors such amicable arrangement is allowed between an insolvent who has filed his petition and his creditors even after lengthy proceedings in Court. In the event of such an arrangement, a rule *nisi* is issued to the creditors to show cause why the petition should not be allowed to be withdrawn (11 and 12 Vict., C. 21, S. 40.)

This procedure allowed under the Insolvency Act in the Presidency towns goes to show that it can scarcely be argued to be against public policy to allow an indebted jághírdár to compound with his creditors after he has sought the protection of the Sind Encumbered Estates Act—an analogous law.

By Section 19 (1) of the latter Act, at any time before he has sanctioned a liquidation scheme under Section 18, the Commissioner *may* direct that the management of an estate shall be relinquished. Under Clause (2) (*b*) of the same section the owner of the property under management is then restored to possession.

This section gives discretionary powers to the Commissioner to relinquish the management. Although, therefore, there is no specific provision allowing withdrawals of applications by applicants under the Act, the Commissioner may, it appears, in the exercise of his discretion, allow applications for such withdrawal and order the enquiry under Section 4 and the *interim* order under Section 15 to be relinquished if he is satisfied about the settlement and if there is no opposition or objection on the part of the creditors. Such relinquishment would, it may be noted, be at an earlier stage of the proceedings than the relinquishment under Section 19 (1) of actual management ordered under Section 8.

The penalty under the Act for a person not complying with the provisions of Section 6 would be a dismissal of his application under Section 7 (*b*). The application being a voluntary act on the part of the applicant, he is liable to punishment only under Section 6 (2) of the Act if he makes a false statement. It would follow, therefore, that the refusal of the applicant to submit a statement under Section 6 would not render him liable to any punishment under Section 179 of the Indian Penal Code. (L. R. No. 735, dated 9th June 1897; *vide* G. R. No. 4696, dated 24th idem.)